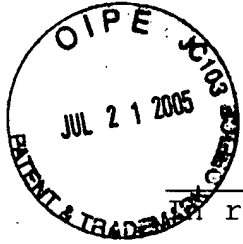


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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
BOARD OF PATENT APPEALS AND INTERFERENCES



Attorney Reference: 29409-1

re Application of: Fuller

Art Unit: 3671

Serial No.: 09/944,922

Examiner: Torres

Filed: 8/31/2001

Appeal No.: TBD

Entitled: WHEELED TRIMMER

Conf. No.: 2250

APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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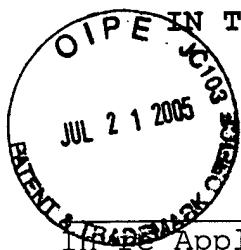
Dear Sir:

This is an appeal from the final rejection dated November 15, 2004 rejecting claims 1-5 in this case. A Notice of Appeal was mailed May 19, 2005. This Brief is accompanied by the requisite fee set forth in §1.17(c).

REAL PARTY IN INTEREST

The real party in interest is Joseph B. Fuller.

COPY



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RELATED APPEALS AND INTERFERENCES

No related appeals and no relevant interferences are known to the appellant.

STATUS OF CLAIMS

The appealed claims are 1-5 all of which are rejected.

Claim 1 was amended on in a Response mailed August 23, 2004.

Claims 2-5 are presented as originally filed.

STATUS OF AMENDMENTS

There are no outstanding amendments to the claims.

SUMMARY OF THE CLAIMED SUBJECT MATTER

The invention is related to a string trimmer. The string trimmer has a base comprising two unidirectional front wheels and a rear multidirectional rear wheel. Attached to the rear of the base is a handle. The handle is attached to the base by a universal joint.

GROUND FOR REJECTION TO BE REVIEWED ON APPEAL

Applicants seek review of the rejection of claims 1, 2 and 4 under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 2,038,697 to Winslow in view of U.S. Pat. No. 4,107,901 to

Moore. In a related issue Applicant seeks review of a rejection of claims 1, 2 and 4 under 35 U.S.C. 103(a) with Winslow replaced by U.S. Pat. No. 5,806,867 to Hampton.

Applicants seek review of the rejection of Claim 3 under 35 U.S.C. 103(a) as being unpatentable over Winslow in view of Moore '901 as applied to claim 1 and further in view of U.S. Pat. No. 4,179,805 to Yamada.

Applicants seek review of the rejection of Claim 5 under 35 U.S.C. 103(a) as being unpatentable over Winslow in view of Moore '901 as applied to claim 1 and further in view of U.S. Pat. No. 5,970,694 to Knox, Jr.

ARGUMENTS

Claim Rejections - 35 USC § 103

Claims 1, 2 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 2,038,697 to Winslow in view of U.S. Pat. No. 4,107,901 to Moore. In a related rejection Winslow is replaced by U.S. Pat. No. 5,806,867 to Hampton.

Winslow is cited as disclosing a device comprising many of the elements of the claimed invention. The Office admits, and Applicant agrees, that Winslow does not specifically disclose a cutting element comprising at least one line.

Moore is combined with Winslow to provide those elements otherwise lacking.

Moore is specific to a stringed mower and details the intended use of such a mower. In col. 8, lines 1-3, Moore sets forth the typical use of a mower as indicated in the passage:

"The lawn mower 2 will be moved progressively in a forward motion so as to cut a suitable swath across the lawn or greensward."

It is clear that the typical and preferred use of string trimmers is to move in a linear forward motion thereby generating a swath of cut grass. One of skill in the art would be led away from a handle for lateral movement which is contrary to the intended use of the mower upon which it is attached.

The Office has further argued that Winslow discloses that the connection may be used on a lawn mower. Moore goes to great length to distinguish between a lawn mower utilizing a rigid blade and an edge trimmer utilizing a string cutter. The attention of the Office is drawn to col. 3 lines 30-35 wherein stated is:

"There is a basic functional distinction between a lawn mower per se, however, and a device which is more accurately denoted as an "edge/trimmer," and this distinction must be clearly understood to appreciate the reason why it has not been possible to merely replace a steel blade with a Weed Eater trimmer head assembly."

Moore then proceeds in the passages that follow to distinguish a lawn mower from a string trimmer referred to therein as an edger/trimmer.

Moore further teaches in col. 8 lines 7-25 that one would not be inclined to utilize a string trimmer as a substitute for a lawn mower for the reasons set forth in the following recitation;

"As hereinbefore explained, however, there is a tendency for the cord member 11 to be deflected not only laterally in a swept-back manner, but also to be deflected upwardly in a vertical manner with respect to the head member 10. Furthermore, as the cord member 11 encounters vegetation in a thicker condition (as it does by rotating across the swath), this vertical deflection will be a function of thickness of the vegetation. Accordingly, as the cord member passes from the front of the lawn mower 2 and is rotated back towards its rear, the cord member then will drop in a vertical manner to produce an oscillating effect which is undesirable in so far as producing an evenly mowed appearance across the greensward. Thus, if this vertical deflection has not been overcome, each swath will have a rounded or convex configuration produced by the upward deflection of the cord member 11, whereas what is desired is a flat appearance or shape."

Moore then proceeds to define a complex structure wherein the string is essentially sheathed in a tube to avoid this undesirable result. Based on the teachings of Moore one would be directed away from the combination and therefore away from the claimed invention.

The Office ignores this clear teaching from one of skill in the art and concludes that it would be obvious to combine a string trimmer, as taught by Moore, with features of a lawn mower to arrive at the present invention. Applicants submit that this is merely hind-sight construction motivated only by present application and multiple written and oral discussions related thereto during prosecution of the present and preceding claims. Moore clearly teaches the differences between lawn mowers and string trimmers. Moore also clearly teaches that the mechanism of use for a string trimmer is in a forward direction and therefore one would not be expected to consider changing the handle to one which deviates from this typical use.

Hampton is cited as an alternative to Winslow. Hampton is specific to a bucket trolley and no guidance concerning any type of mowing operation is provided.

The rejection of claims 1, 2 and 4 under 35 U.S.C. 103(a) as being unpatentable over Winslow in view of Moore is traversed. Notice thereof is respectfully solicited.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Winslow in view of Moore '901 as applied to claim 1 and further in view of U.S. Pat. No. 4,179,805 to Yamada.

The inapplicability of Winslow and Moore '901 is discussed previously and all previous arguments are relevant herein as well.

Yamada is cited as disclosing a trimmer with a lower grip. Yamada describes the problem associated with swinging the cutting implement and the necessity for a handle. If the device is not swung there would be no inertial forces to overcome, as described in col. 1 second paragraph, and therefore no need for a handle.

In summary, Winslow and Moore fail to teach the basic invention and Yamada fails to mitigate the deficiencies of these primary references. Furthermore, Yamada teaches a handle to solve a problem which does not exist in the present invention. Therefore, one of skill in the art would not be inclined to add an element to solve a non-existent problem except in hindsight.

Applicants respectfully submit that the rejection of claim 3 under 35 U.S.C. 103(a) is improper and removal is respectfully requested.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Winslow in view of Moore '901 as applied to claim 1 and further in view of U.S. Pat. No. 5,970,694 to Knox, Jr.

The inapplicability of Winslow and newly cited Moore '901 is discussed previously and all previous arguments are relevant herein as well.

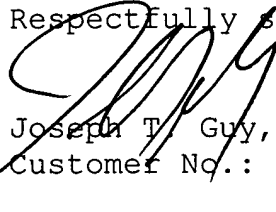
Knox, Jr. is cited as disclosing an electric motor. Knox Jr. fails to mitigate the deficiencies of the primary references with which it is combined. Even with the teachings of Knox Jr. one of skill in the art would still not be expected to combine Winslow and Moore '901 to arrive at the instant application.

Applicants respectfully submit that the rejection of claim 5 under 35 U.S.C. 103(a) is improper and removal is respectfully requested.

CONCLUSION

The rejections of claims 1-5 have been traversed.
Appellants request that claims 1-5 be passed to issuance in an
expeditious manner.

Respectfully submitted,



Joseph T. Guy, Ph.D.
Customer No.: 46591

July 18, 2005

Enclosure: None

APPENDIX

1. (previously presented) A trimmer comprising:
 - a base comprising a front and a rear;
 - a motor attached directly to said base wherein said motor is attached to and rotates a cutting element wherein said cutting element comprises at least one line;
 - two unidirectional wheels attached directly to said front of said base;
 - a multidirectional wheel attached directly to said rear of said base;
 - a handle; and
 - a universal joint comprising two non-parallel axles connecting said handle to said rear of said base above said multi-directional wheel.
2. (original) The trimmer of claim 1 wherein said base comprises a recess.
3. (original) The trimmer of claim 1 further comprising a lower grip attached to said handle.
4. (original) The trimmer of claim 1 wherein said universal joint comprises:
 - a handle couple attached to said handle;
 - a link rotatably attached to said handle couple; and
 - a bracket rotatably attached to said link and attached to said base.
5. (original) The trimmer of claim 1 wherein said motor is an electric motor.
- 6-17. (canceled)